

Application No. 10/797,876
Response dated January 26, 2007
to Office Action mailed July 26, 2006

REMARKS

The Examiner has rejected claims 1-8, 13-16 and 18 under 35 U.S.C. § 103 as being unpatentable over Hareland et al. U.S. Patent No. 6,909,151 in view of Cho et al. Claims 10 and 11 are rejected under § 103 as being unpatentable over Hareland et al. in view of Cho et al., and further in view of Christiansen et al. U.S. Patent Application Publication No. 2003/0218189. Claim 17 is rejected under § 103 as being unpatentable over Hareland et al. in view of Cho et al., and further in view of Edwards et al. U.S. Patent No. 5,259,881. Claims 19 and 20 are rejected under § 103 as being unpatentable over Hareland et al. in view of Cho et al., and further in view of Yamaguchi et al. U.S. Patent Application Publication No. 2003/0209816. The following remarks are respectfully submitted.

Cho et al. is cited in each rejection of the pending claims. Included herewith is an affidavit under 37 CFR 1.131 signed by all inventors for the purpose of antedating the Cho et al. reference, thereby removing it as a reference against patentability of the pending claims. As set forth in the attached affidavit, Applicants rely upon proof of an earlier conception, coupled with diligence from just prior to the publication date of the reference to the filing of the present application, which constitutes constructive reduction to practice. Specifically, Applicants submit the following timeline of relevant (although not complete) inventive activity, supported by the attached affidavit:

- *Prior to 2/16/2004:* Conception and conveyance of invention to in-house IP (Intellectual Property) department;
- *Prior to 2/16/2004:* Preparation of draft application by in-house IP department describing and claiming conceived invention;
- *Prior to 2/16/2004:* Conveyance of draft application to outside patent counsel (Wood, Herron & Evans) for review and revision (see Exhibit A);
- *Prior to 2/16/2004:* Outside patent counsel emailed revised draft to in-house IP department (see Exhibit B);
- *Prior to 2/16/2004, specifically 2/13/04:* in-house IP department emailed further revised draft to outside patent counsel (see Exhibit C);
- *2/14/04-2/15/05:* weekend (non-business days);
- *2/16/2004 (Monday),* the publication date of Cho et al.: Outside patent counsel emailed the

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final application to the in-house IP department;

- 2/17/2004 (*Tuesday*): Outside patent counsel mailed by Federal Express, overnight delivery, revised formal papers to the in-house IP department;
- 2/18/2004 (*Wednesday*): The in-house IP department received the revised formal papers and promptly emailed them, with the final application, to the inventors;
- 2/19/2004 (*Thursday*), 2/20/2004 (*Friday*), 2/23/2004 (*Monday*), 2/24/2004 (*Tuesday*): Application with inventors for review;
- 2/25/2004 (*Wednesday*): execution of Declaration by four of six inventors, with no changes to the application;
- 2/26/2004 (*Thursday*): execution of Declaration by fifth of six inventors, with no changes to the application;
- 2/28/2004-2/29/2004: weekend (non-business days);
- 3/3/2004 (*Wednesday*): follow-up by in-house IP department to first-named inventor (Anthony (Tony) Dip) regarding status of review and execution of formal papers, and reply by first-named inventor that delay due to one inventor being away from the office on a field service call for a client;
- 3/3/2004-3/4/2004 (*Thursday*): Application with sixth of six inventors for review;
- 3/5/2004 (*Friday*): execution of Declaration by sixth of six inventors, with no changes to the application, this inventor having been previously unavailable to review application due to working at client site on field service call, but returned to office on 3/3/2004 and promptly reviewed application upon his return;
- 3/6/2004-3/7/2004: weekend (non-business days);
- 3/9/2004 (*Tuesday*): signed Declarations mailed to outside patent counsel with instruction to proceed with filing application;
- 3/10/2004 (*Wednesday*): Outside patent counsel received signed Declarations and filed application.

As set forth by this time-line and the affidavit submitted herewith, conception of the claimed invention occurred prior to the publication date of Cho et al. and diligence was exercised by the inventors and their IP/legal representatives in constructively reducing the invention to practice from a date just prior to the publication date of Cho et al. until the filing date of March 10, 2004. Therefore, it is respectfully requested that the Cho et al. reference be removed as a reference against the pending claims.

In view of the foregoing remarks given herein and the 131 Affidavit, Applicants respectfully believe this case is in condition for allowance and respectfully request allowance of

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the pending claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

Applicants are of the opinion that no additional fee for excess claims is due as a result of this Amendment. Applicants are also of the opinion that a 3-month extension of time is due with this Response. Payment of all charges due for this filing is made on the attached Electronic Fee Sheet. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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